IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.12157 of 2006

For Approval and Signature:
HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA Sd/-

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DR.SHRADDHA ASHWINBHAI GOR, DENTIST & 1-Petitioner(s)
Versus
THE STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for MR TUSHAR MEHTA for the Petitioners
MR SP HASURKAR, AGP, for Respondent(s) : 1,
MR BHASKAR P TANNA, SENIOR ADVOCATE, with MS. MAHROOK N KERRAVALA for TANNA ASSOCIATES for Respondent(s):2
MRS VD NANAVATI for Respondent(s) : 3
MR ND NANAVATI, SENIOR ADVOCATE, with MR MITUL K SHELAT for Respondent(s): 4
MR ARCHANA AMIN for Respondent(s) : 5,
MR Y.N. OZA, SENIOR ADVOCATE, with MR G.M. JOSHI for Respondent(s): 6-18 and 20-29

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CORAM : HONOURABLE THE ACTING CHIEF JUSTICE Y.R.MEENA

and

HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 17/07/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. This petition came up for admission on 26th June, 2006 before the learned Single Judge, who issued notice returnable on 28th June, 2006 to the respondents. While doing so, the learned Single Judge directed respondent No.4 not to grant admissions to the Post Graduate Course in Dental stream on the basis of Common Entrance Test held by respondent No.4 on 25th June, 2006. At the same time, the learned Single Judge permitted respondent No.4 to grant admissions on the basis of merit list prepared by Gujarat University i.e. respondent No.3.

2. When the matter came up for hearing on the returnable date i.e. 28th June, 2006, the petitioners were permitted to place subsequent developments on record and after hearing the parties, the Court, while continuing the earlier interim order made a further order staying the admissions granted to 23 students as per list Annexure 'G' accompanying the amendment.

3. This order was carried in appeal by respondent No.4-College being SLP (Civil) No.10469 of 2006 and some of

the students, who had secured the admissions, being SLP (Civil) ..... CC No.4850 of 2006. The Supreme Court heard both the matters together and passed a common order on 30th June, 2006. Without expressing any opinion on merits of the matter it was stated that:

> "..... What is challenged before us is only an interim order. The writ petition is pending and the pleadings are not complete. It is submitted by Mr. P.P. Rao, learned Senior Counsel for the petitioner, that the direction given by the High Court by its interim order is contrary to the decision of this Court reported in 2005(6) SCC 537. However, in our view, that is a matter which is to be argued and decided by the High Court in the pending writ petition. We, therefore, request the Hon'ble Chief Justice of the High Court to place this Special Civil Application No.12157 of 2006 before the Division Bench for an expeditious disposal, at any rate not later than two weeks from the date of communication of our order. Both the parties are at liberty to file their additional documents and pleadings and other submissions before the Division Bench. We request the Division Bench to decide the matter within two weeks. We also make it clear that the students who have already been admitted cannot clam any equity in their

favour, and their admission shall be subject to the final outcome of the writ petition.

In the meantime, the interim order passed by the High Court shall remain stayed.

Since we have extended the time for disposal of writ petition by two more weeks from the date of receipt of the copy of the order, we also grant leave to Dental Council of India to extend the time, if the circumstances so warrant.

The respondent Nos.5 & 6 in Special Civil Application No.12157 of 2006 shall implead the selected students as respondents in their writ petition. Selected students are also at liberty to apply for impleadment.

The special leave petitions are disposed of accordingly."

4. Hence, as the aforesaid order made by the Apex Court was received by this Court on 4th July, 2006, the matter was directed to be placed for hearing on 5th July, 2006. On 5th July, 2006, 23 students, who had secured admissions, were permitted to be impleaded as party respondents and directions were issued to the parties to complete the pleadings within three days. The matter

was posted for hearing finally on 11th July, 2006 and was, accordingly, heard at length.

5. The petitioners are holding degree (BDS) seeking admission to Post Graduate Dental Courses. The petitioners have principally opposed the process of selection undertaken by respondent No.4-College i.e. the entrance test and the preparation of the merit list. The principal ground, on which the action of respondent No.4-College is challenged, is that the entrance test conducted by respondent No.4-College does not fulfill the tests laid down by the Apex Court i.e. such a test must be fair, transparent and non-exploitative. It is averred that instead of adopting fair and just formula worked out by respondent No.3-Gujarat University, respondent No.4-College has, with mala fide intention, devised such a schedule for the entrance test that the entrance test is neither fair nor transparent and the college has committed illegality while granting admissions.

6. Respondent No.4-College is the principal contesting respondent. All the averments have been denied. It is submitted that respondent No.4 is the only unaided

college offering MDS course in the State of Gujarat and any student possessing a BDS degree is eligible to seek admission. That after obtaining formal permission from Government of India vide communications dated 11th May, 2006 and 17th May, 2006 for starting MDS course with 23 seats for academic year 2006-2007, respondent No.4-College approached respondent No.3-University and offered 50% seats to respondent No.3-University. This offer was made while seeking affiliation with respondent No.3-University. Respondent No.4 contends that thereafter, on 8th June, 2006, respondent No.3-University communicated that earlier ad hoc admission procedure stood cancelled and the admissions should be granted by respondent No.4-College as per guidelines issued by the Apex Court, but, at no point of time, respondent No.4 had received any list of students admitting students in relation to 50% of the seats. Therefore, according to respondent No.4, it worked out the schedule for conducting an entrance test and grant admissions on basis of the same. This fact was intimated by letter dated 13th June, 2006 to respondent No.2-Committee. The said communication was followed by letter dated 15th June, 2006 reiterating the same thing.

On the said day i.e. 15th June, 2006, it is the say of the respondent No.4, that advertisements were issued in local, regional and national newspapers inviting applications for admission of students to the Post Graduate Courses. Respondent No.4 received letter dated 14th June, 2006 from respondent No.2-Committee on 18th June, 2006 wherein the Committee communicated that the proposed test was not meeting with the requirements stipulated by the judgment of the Apex Court. On 19th June, 2006 respondent No.4 forwarded details regarding the admission procedure, proforma of admission rules and admission form to respondent No.2-Committee. This was followed by communication dated 20th June, 2006 whereunder respondent No.4-College insisted on exercising its fundamental right and enclosed the schedule regarding submission of proposed question paper, name of the printing press, name of the person in charge of assessment of the answer books. On 22th June, 2006 respondent No.4-College wrote to respondent No.2-Committee submitting complete details regarding conduct of test.

7. At this stage, it is necessary to note that the advertisement published by respondent No.4-College reads as under:

K.M. SHAH DENTAL COLLEGE & HOSPITAL Piparia, Ta Waghodia, Dist. Baroda	
Application are invited for P.G. Course (M.D.S. in all branches) in Dental Course or academic year 2006 – 2007 Form 17th June 2006	
Last Date of Receipt of Form : 22-06-2006	Application Form Fee : 500.00
Date of Entrance exam : 25-06-2006	Process/Exam Fee :1000.00
Date of Counceling : 27-06-2006	Principal

8. On 22nd June, 2006 respondent No.2-Committee issued advertisements in various newspapers to the effect that the admission test to be conducted by respondent No.4-College was unconstitutional and no admissions could be granted on the basis of such examination, and admissions if granted, would be considered illegal. Respondent No.4 also received a communication to the aforesaid effect. Respondent No.4 reacted and on 22nd June, 2006 itself wrote back to respondent No.2 stating that the advertisements issued by the Committee were illegal. It is further the case of respondent No.4 that on 23rd June, 2006 the paper setter appointed by respondent No.4 approached the Committee along with

proposed question paper, however, the office of the Committee did not accept the same. On 24th June, 2006 respondent No.4 wrote to the committee stating that the Office of the Committee was not accepting communications sought to be delivered by hand and it was a regrettable step. On 24th June, 2006 respondent No.4 also informed respondent No.3-University regarding test to be conducted and invited the University to depute a responsible person to supervise the examination procedure.

9. It is the case of respondent No.4 that, accordingly, the test was conducted on 25th June, 2006 and since there were only 24 students, who had appeared at the test, 23 students were granted admission on 26th June, 2006, fees were collected on the same day. It is submitted that the advertised schedule was given a go-by because – (i) no application was received from any N.R.I. candidates; (ii) there were only 23 students to be admitted; AND (iii) there was paucity of time (extended date for admission for the academic year was expiring on 30th June, 2006). Therefore, the petitioners could not be heard to make a grievance and the petition was not required to be

entertained as, admittedly, the same had been moved only on 26th June, 2006 at 2:15 p.m., by which time the entire admission process was over. In this context, according to respondent No.4, the observations made by the learned Single Judge are unwarranted.

10. The entire case of respondent No.4-College is based on the following legal propositions made by the learned Senior Counsel for respondent No.4:

A) Right to devise admission procedure is the fundamental right of an unaided college;

B) Admission procedure adopted by the University for government college cannot be applied to respondent No.4-College since all students from different universities are eligible to apply;

C) The test conducted by respondent No.4-College meets triple tests prescribed by the Apex Court in the case of P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors., (2005) 6 SCC 537.

Incidental submission was made regarding conduct of respondent No.2-Committee in consistently denying the right available to respondent No.4-College.

11. Having heard the learned counsel appearing for the respective parties, including the 23 students, who have already secured admissions, it is apparent that the controversy lies in a very narrow compass and there is no dispute as to any legal proposition.

12. Respondent No.4-College is right in contending that the settled position in law permits an unaided college to formulate and adopt an admission procedure without being directed by any authority, including respondent No.2-Committee, in this regard. Therefore, on this count the stand of respondent No.2-Committee cannot be accepted and the advertisement issued by respondent No.2-Committee on 22nd June, 2006 goes beyond the powers available to the committee, even if the Committee is constituted under the directions issued by the Apex Court under Article 142 of the Constitution.

13. However, even while granting the right available to respondent No.4-College the question that requires to be posed and answered is as to whether the entrance test, including schedule thereof, fulfills the triple requirements of the test being fair, transparent and non-

exploitative. This can be answered only on the basis of the facts and evidence available on record.

14. The sequence of events has already been narrated hereinbefore. It is an admitted fact that respondent No.4-College was granted permission for starting MDS Courses in different specialties vide two different communications : under the first communication 13 seats were sanctioned in four different specialties, while under the second communication 10 seats were sanctioned in five different specialties. The Letter of Intent issued by Government of India laid down fulfillment of various conditions. It is the say of respondent No.4 that it was on 13th June, 2006 that respondent No.4 approached respondent No.2-Committee with its decision to admit the students in accordance with the judgment in case of P.A. Inamdar & Ors. (supra). The said communication categorically states that out of total 23 seats in MDS course 15% seats will be filled up from N.R.I. quota and 85% seats will be filled up after conducting entrance examination. The schedule annexed to communication dated 15th June, 2006 is only for the purposes of filling up 85%

seats. However, the schedule which was advertised (which is reproduced hereinbefore) does not specify that the test was for the purposes of filling up 85% of the seats. In fact the advertisement does not state anything qua the N.R.I. quota. The bifurcation between general category and N.R.I. category appears only in the guidance notes issued with the admission form for the entrance test. This belies the claim of respondent No.4-College that no applications were received from N.R.I. students. The students opting for N.R.I. quota could not have applied in absence of wide and adequate publicity of the schedule as well as fixation of the quota. Therefore, to contend that all the seats were filled up in the morning of 26th June, 2006 because no student had applied in N.R.I. quota itself goes to show that the procedure adopted by respondent No.4-College was not fair and transparent.

15. The schedule as available in the advertisement stipulates that the application forms will be available from 17th June, 2006 and the last date of receipt of the form would be 22nd June, 2006. The entrance examination is to be conducted on 25th June, 2006 and

counseling is scheduled on 27th June, 2006. At this juncture, it is necessary to take note of the fact that another advertisement appeared in 'Sandesh' newspaper on 21st June, 2006 inviting applications for N.R.I. quota. The said advertisement reads as under:

K.M. SHAH DENTAL COLLEGE Piparia, Ta. Waghodia, Dist. Baroda. Tel. : 02668-245261 Fax : 02668 – 245292, 245126 Email : drdixitshah@yahoo.com
Applications are invited for Admission **IN NRI QUOTA FOR MDS COURSE** *till 26-6-2006* *Principal*

16. Therefore, this factor once again goes to show that the submission on behalf of respondent No.4-College that no applications were received from students seeking admission in N.R.I. quota is factually, though correct, against the schedule fixed by respondent No.4-College. The applications were invited till 26th June, 2006. Therefore, to state that in the morning of 26th June, 2006 no applications had been received from students in N.R.I. quota goes to show that the conduct of respondent No.4-College was not fair. Issuing of an advertisement separately, after six days of first advertisement would go to show that the conduct was

not transparent, considering the fact that the earlier advertisement did not specify that it was only for 85% of seats.

17. There is one more factor which requires to be noticed. The first communication from Government of India was in relation to 13 seats in four specialties while the second communication was in relation to 10 seats in five specialties. Thus, total number of 23 seats were spread over nine different specialties, out of which 15% seats were to be reserved for students in N.R.I. quota. In the circumstances, not only respondent No.4-College was required to await response, at list still evening of 26th June, 2006 for any student applying in N.R.I. quota, but undertake counseling for the purposes of offering different specialties to students falling within the general category and in N.R.I. category. Even if there would be no student claiming in N.R.I. quota, the said fact would be known only in the evening of 26th June, 2006 and in these circumstances, the respondent No.4-College could not have been undertaken the exercise of completing admission process of 23 seats in the morning of 26th June, 2006.

18. Each student was required to pay a sum of Rs.1,50,000/- (Rupees One lac fifty thousand) in cash upfront at the time of securing admission. To state that all the students were ready with the cash on the morning of 26th June, 2006, without there being any counseling as to option for a particular specialty being offered, is something which cannot be accepted in the normal course of human behaviour. It does not stand to reason that all the students who had appeared for the examination on 25th June, 2006 would all come with ready cash on the morning of 26th June, 2006. This is all the more so because the examination was scheduled between 12 Noon to 3:00 p.m. and to state that all the papers (which were of 200 marks each) could have been assessed between 3:00 p.m. and evening of 25th June, 2006 so as to leave enough time to the management of respondent No.4-College to intimate each and every student on the evening of 25th June, 2006. It only indicates that conducting of the so-called test was merely a facade.

19. It is contended that the action of preponing the schedule and granting admissions on 26th June, 2006 was because of expiry date of 30th June, 2006. This explanation is

merely to gloss over the conduct of respondent No.4-College. The last date of 30th June, 2006 was already known when the schedule was fixed and advertisement issued on 15th June, 2006. Therefore, this contention also does not merit acceptance. In these circumstances, no valid reason has been shown, and none is available on record, to explain why the entire merit list was prepared and acted upon on the same day i.e. 25th June, 2006, when the test was supposed to have been held.

20. In the aforesaid set of facts and circumstances which have come on record, it is apparent that the entire admission process stands vitiated : it is neither fair nor transparent. Once it is not fair nor transparent it cannot be said that it is non-exploitative.

21. At Annexure 4/22, which is part and parcel of the affidavit-in-reply filed by respondent No.4-College, the students' result sheet is available and the first column records the 'Application Number'. As can be seen therefrom the said result sheet refers to application No.1 at the top and at the end to application No.32. Therefore, the submission that there were only 24

students who appeared at the test out of which 23 were granted admission does not appear to be prima facie acceptable. At list, there were 32 applications, if not more. To say that students who had applied at Sr. Nos.9, 15, 17, 21, 23, 25, 30 and 31 did not take the test is not possible to believe. No explanation is forthcoming. A student having paid fees of Rs.1,500/- towards application and examination fees would not then refrain from appearing at the examination. It could be that because of circumstances beyond control, one or two applicants may not turn up for the test but to say that eight did not appear out of thirty two (or may be more) (which is ¼ of the total) is not a palatable proposition. It only indicates and strengthens the belief that the conduct of respondent No.4-College was neither fair nor transparent.

22. The aforesaid belief and impression gained by the Court becomes clear and fortified by the affidavit dated 10th July, 2006 filed by the twenty fourth student who is said to have not made it. This affidavit is available on record along with rejoinder filed by the petitioners. In the said affidavit it is categorically stated that "..... *I state and*

submit that the said statement is patently false as no one was informed by anyone present in the examination that the date of counseling, which is scheduled on 27th June 2006 is rescheduled and kept on 26th June, 2006. I state and submit that I was never communicated by respondent No.4 college by any other mode about the said change of date of counseling. I say and submit that in fact it was declared that the merit list would be published on the website and therefore I had seen my merit list in the website and was intending to go on 27th June 2006 for the purposes of counseling. I am shocked to learn that respondent No.4-college has sought to conclude the entire admission procedure on 26th June 2006 at around 11:30 AM keeping me in dark."

23. Therefore, once a student states on oath, and there is no reason not to accept the statement, the entire case built up by respondent No.4-College falls to ground. The affidavit filed on behalf of respondent Nos.6 to 29 (except respondent No.19) i.e. students who have been admitted does not state anything as regards this categorical denial on oath. Neither does respondent No.4-College deny this averment.

24. If each one of the above factors is examined in isolation it may, or may not, point towards the entrance test being fair and transparent, and the conduct of respondent No.4 being malafide. However, on a cumulative appreciation of all the facts and factors, at the touchstone of preponderance of human probabilities, it becomes evident that the entire conduct of respondent No.4 on and from 15.06.2006, i.e. the day advertisements were published, is not only dubious but devious and malafide.

25. Respondent No.2-Committee is expected to bear in mind the following observations made by the Apex Court in the case of *Miss Mohini Jain v. State of Karnataka and Ors.*, AIR 1992 SC 1858 :

> *" The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society".*

26. In the case of Saurabh Chaudri & others Vs. Union of India & Others, *(2003) 11 SCC 146* it was observed by the Supreme Court :

> *"96. The growth of the professional institutions has been at a geometrical rate during the last five years. During recent years the expansion of educational facilities for higher education has been nearly exclusively in the private unaided sector due to the financial incapacity of Governments.*
>
> *97. Those who have ventured to start the new institutions are motivated by commercial interests and not by educational and social interests. Political considerations have become paramount in sanctioning of colleges. There has been a high level of exploitation of students in certain disciplines through unethical and illegal collection of unauthorized payments. The discontent among the meritorious students is simmering also because only those, even with poor competence, but who could pay high illegal amounts can get into many institutions."*

27. It is in the aforesaid context that the role of respondent No.2-Committee requires to be appreciated. One can only say with anguish that the Committee has failed to

discharge its duty in the manner expected of it. In the judgment in the case of *Saurabh Chaudri & Ors.* the Apex Court stated : *"The number of qualified students wanting to go for higher studies has been swelling, largely motivated by hopes of better economic security and partly by a desire to attain greater upward social mobility. Then begins their trauma due to many prevailing unfair practices in admissions and devious ways of fee collections exploiting the anxiety of students and uncertainty of procedures. Most of the efforts to deal with these problems are ad hoc in nature often decided under judicial orders. Different State and Central authorities take many different actions often leading to severe inconsistencies. There is substantial scope for streamlining the admission process, even within the regulatory powers of the authorities, provided these issues are not dealt with on an emergency basis during the admission season but done in a coordinated and comprehensive manner ahead of time".*

This Court has already rendered opinion on this count in the judgment rendered on 05.07.2006 in Letters Patent

Appeal No.874 of 2006 in the case of *Justice* R.J.Shah Admission Committee for Professional Courses Vs. The Association of Managements of Gujarat Unaided Engineering Colleges & Anr., it is not necessary to reiterate the same observations.

28. The Committee should appreciate that in this unsavoury episode it is the students who are the silent sufferers, spectators, as most of the times they are not even represented before the Court. The Committee instead of functioning from its ivory towers needs to come down to earth and ensure that the decisions it takes are neither ad hoc nor such so as to pressurise the students, the managements and the universities to rush to the Court every time a decision is announced. The decisions have to be taken in advance, well within time and in accordance with law and the powers available to the Committee, not dehors the same. The right of meritorious students to get admission in a postgraduate course is a fundamental and human right, which is required to be protected. Such a valuable right cannot be permitted to be whittled down at the instance of less meritorious students. This should be the underlying

object while arriving at various decisions by the Committee.

29. In the result, the petition is required to be allowed and the entire admission process initiated by respondent No.4-College is quashed and set aside. Considering the paucity of time, respondent No.4-College is directed to admit the students from the list prepared by the University which is based on performance of the students at the examination of first year, second year and third year B.D.S. as well as at the entrance test conducted by the university. This direction will operate only for academic year 2006-2007. It will be open to the Committee, respondent No.4-College and the University to sit together and evolve a method to ensure a fair, transparent and non exploitative procedure of admission for the students to be admitted for academic year 2007-2008 and onwards, which should take care of respective rights and duties of the management and students, and be consistent.

30. As a natural corollary respondent No.4-College is directed to return the fees collected from 23 students immediately, not later than 19.07.2006. This direction

shall operate regardless of whether this decision is challenged further or not.

31. To summarise :

(a) Respondent No.4-College has a legal right to evolve its own modality for admissions;

(b) Respondent No.2-Committee should function within the powers available to it;

(c) However, in the facts and circumstances of the case, the so-called entrance test conducted by respondent No.4-College is not fair, transparent and non-exploitative.

32. In the result, for the reasons stated hereinbefore, the petition is allowed. Rule made absolute. Respondent No.4-College shall pay the costs quantified at Rs.10,000/- (Rupees Ten thousand) to the petitioners.

Sd/-
[Y.R. MEENA, Actg. C.J.]

Sd/-
[D.A. MEHTA, J]

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Bhavesh/M.M.Bhatt*

33. Learned counsel for respondent No.4 prays for staying the operation of this order. We see no justification. The prayer sought for is rejected.

Sd/-
[Y.R. MEENA, Actg. C.J.]

Sd/-
[D.A. MEHTA, J]

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Bhavesh